



1 the Cooper Castle Law Firm, LLP, as Trustee. (2011 Substitution of Trustee, ECF No. 7-5.)

## 2 **II. LEGAL STANDARD**

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a  
4 cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l v.*  
5 *Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss  
6 under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint  
7 does not give the defendant fair notice of a legally cognizable claim and the grounds on which it  
8 rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the  
9 complaint is sufficient to state a claim, the Court will take all material allegations as true and  
10 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d  
11 896, 898 (9th Cir. 1986).

12 The Court, however, is not required to accept as true allegations that are merely  
13 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*  
14 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action  
15 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation  
16 is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550  
17 U.S. at 555) (emphasis added).

18 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)  
19 for failure to comply with Rule 8(a). *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124,  
20 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's complaint contain "a short and plain  
21 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).  
22 "Prolix, confusing complaints" should be dismissed because "they impose unfair burdens on  
23 litigants and judges." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996). Mindful of the  
24 fact that the Supreme Court has "instructed the federal courts to liberally construe the 'inartful  
25 pleading' of pro se litigants," *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987), the Court

1 will view Plaintiff's pleadings with the appropriate degree of leniency.

2 "Generally, a district court may not consider any material beyond the pleadings in ruling  
3 on a Rule 12(b)(6) motion . . . . However, material which is properly submitted as part of the  
4 complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard*  
5 *Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,  
6 "documents whose contents are alleged in a complaint and whose authenticity no party  
7 questions, but which are not physically attached to the pleading, may be considered in ruling on  
8 a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for  
9 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule of  
10 Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. S. Bay*  
11 *Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers  
12 materials outside of the pleadings, the motion to dismiss is converted into a motion for summary  
13 judgment. *See* Fed. R. Civ. P. 12(d); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912,  
14 925 (9th Cir. 2001).

15 If the court grants a motion to dismiss, it must then decide whether to grant leave to  
16 amend. Pursuant to Rule 15(a), the court should "freely" give leave to amend "when justice so  
17 requires," and in the absence of a reason such as "undue delay, bad faith or dilatory motive on  
18 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
19 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
20 amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only  
21 denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See*  
22 *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

### 23 **III. DISCUSSION**

24 In his Complaint, Plaintiff refers to "Nevada and Federal statutes for intentional  
25 misrepresentation and negligent misrepresentation." (Compl., 2:¶3.) He also refers to the

1 securitization of his mortgage loan, and names “Deutsche Bank AG” and “Loop Capital Markets  
2 LLP” as the beneficiaries of the securitization, and “Wells Fargo Bank” as the Trustee. (Compl.,  
3 2:¶4(2). He claims that he “had a justified reliance on truthfulness of ownership and proper  
4 assignments which was misrepresented by defendant’s account of ownership beneficiary  
5 through endorsements, assignments, and Notice of Default,” and that he “has directly suffered  
6 loss of income and deformation of character as a result of the intentional misrepresentation  
7 orchestrated by the defendants.” (Compl., 2:¶4(4)-(5).) Plaintiff does not allege that foreclosure  
8 proceedings have begun, but instead refers to “any foreclosure procedure of said property during  
9 this litigation process.” (Compl., 2:¶5.)

10 To state a claim for fraud or intentional misrepresentation, a plaintiff must allege three  
11 factors: (1) a false representation by the defendant that is made with either knowledge or belief  
12 that it is false or without sufficient foundation; (2) an intent to induce another’s reliance; and (3)  
13 damages that result from this reliance. *See Nelson v. Heer*, 163 P.3d 420, 426 (Nev. 2007). A  
14 claim of “fraud or mistake” must be alleged “with particularity.” Fed. R. Civ. P. 9(b). A  
15 complaint alleging fraud or mistake must include allegations of the time, place, and specific  
16 content of the alleged false representations and the identities of the parties involved. *See Swartz*  
17 *v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). Rule 9(b) does not allow a complaint to  
18 merely lump multiple defendants together but requires plaintiffs to differentiate their allegations  
19 when suing more than one defendant and inform each defendant separately of the allegations  
20 surrounding his alleged participation in the fraud.” *Id.*

21 Here, even construing material facts in Plaintiff’s favor, the Court cannot find that  
22 Plaintiff has sufficiently stated his claims so as to give Defendants fair notice of a legally  
23 cognizable claim and the grounds on which it rests; and he has not provided sufficient factual  
24 basis to show that a violation is plausible, and not merely possible. To the extent that Plaintiff is  
25 alleging violations as a result of the securitization of his mortgage loan, Plaintiff has not alleged

1 facts showing that a violation is plausible. The Court takes judicial notice of the publicly  
2 recorded documents referenced in Plaintiff's Complaint as well as in Wells Fargo's Request for  
3 Judicial Notice, and finds that these documents also provide no factual basis supporting  
4 Plaintiff's claims.<sup>1</sup>

5 The Court will permit Plaintiff to amend his Complaint so as to cure these deficiencies.  
6 However, failure to timely cure the deficiencies described above will result in dismissal of this  
7 action with prejudice.

8 **IV. CONCLUSION**

9 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 6) is **GRANTED**.  
10 Plaintiff's Complaint is **DISMISSED without prejudice**. Plaintiff shall have until **July 15,**  
11 **2013**, to file an amended complaint curing the deficiencies described above. **Failure to do so**  
12 **by this deadline will result in dismissal of this action with prejudice.**

13 **DATED** this 2nd day of July, 2013.

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17 Gloria M. Navarro  
18 United States District Judge  
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24 <sup>1</sup> The Court recognizes that confusion may have resulted from the April 2009 Substitution of Trustee and Deed of  
25 Reconveyance that was executed, relating to a different Deed of Trust on the property from 2008. (April 2009  
Substitution of Trustee, ECF No. 7-6.) In 2011, on behalf of Freedom Mortgage, MERS assigned and transferred  
the beneficial interest in the Deed of Trust to Freedom Mortgage, possibly as a result of this confusion.  
(Assignment, ECF No. 7-5.) However, these documents show no violations on the part of Defendants.